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RICHARD W. WENKING  
CLERK, U.S. DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

JCS

JASMINE HUBBARD and MARVEL  
MILLS, individually and on behalf of a  
class of similarly situated individuals

Case No.

**CV 11 4648**

CLASS ACTION COMPLAINT FOR:

Plaintiffs,

v.

WENNER MEDIA LLC, a Delaware  
limited liability company

**VIOLATIONS OF THE TELEPHONE  
CONSUMER PROTECTION ACT,  
47 U.S.C. § 227, CALIFORNIA  
UNFAIR COMPETITION LAW, CAL.  
BUS. & PROF. CODE § 17200,  
CALIFORNIA FALSE ADVERTISING  
LAW CAL. BUS. & PROF. CODE §§  
17500, AND BREACH OF  
CONTRACT.**

Defendant.

DEMAND FOR JURY TRIAL

**CLASS ACTION COMPLAINT**

Plaintiffs Jasmine Hubbard and Marvel Mills ("Plaintiffs") bring this class action complaint against Defendant Wenner Media LLC ("Wenner" or "Defendant"), to stop Defendant's practice of making, through its telemarketing agents, unsolicited text message calls to cellular telephones and inducing sales through the use of deceptive offers for gift cards contained in those unsolicited text message calls. Plaintiffs also seek to obtain redress for all persons injured by the Defendant's conduct. Plaintiffs, for their class action complaint, allege as follows upon personal knowledge as to themselves and their own acts and experiences, and, as to all other matters, upon information and belief.

CLASS ACTION COMPLAINT

FAXED  
FIRST LEGAL SUPPORT SERVICES

## NATURE OF THE CASE

1  
2 1. Wireless spam is a growing problem in the United States. According to a  
3 recent study conducted by the Pew Research Center, “Spam isn’t just for email anymore; it  
4 comes in the form of unwanted text messages of all kinds—from coupons to phishing  
5 schemes—sent directly to user’s cell phones.” In fact, “57% of adults with cell phones have  
6 received unwanted or spam text messages on their phone.” Amanda Lenhart, Cell Phones  
7 and American Adults: They Make Just as Many Calls, but Text Less than Teens, Pew  
8 Research Center (2010) at [http://pewinternet.org/Reports/2010/Cell-Phones-and-American-](http://pewinternet.org/Reports/2010/Cell-Phones-and-American-Adults.aspx)  
9 [Adults.aspx](http://pewinternet.org/Reports/2010/Cell-Phones-and-American-Adults.aspx).

10 2. In a recent effort to promote paid subscriptions to its magazine products,  
11 Defendant Wenner, a publisher of well-known magazines such as *Us Weekly* and *Rolling*  
12 *Stone*, engaged in an especially pernicious form of marketing through its outside  
13 telemarketing agents: the transmission of deceptive advertisements in the form of “text  
14 message” calls to the cellular telephones of consumers throughout the nation.

15 3. By effectuating these unauthorized text message calls (hereinafter, “wireless  
16 spam”), Wenner, along with its telemarketing agents, caused consumers actual harm, not  
17 only because consumers were subjected to the aggravation that necessarily accompanies  
18 wireless spam and because consumers frequently have to pay their cell phone service  
19 providers for the receipt of such wireless spam, but also because such wireless spam contains  
20 deceptive and misleading advertising which Wenner and its agents do not honor.

21 4. In order to redress these injuries, Plaintiffs, on behalf of themselves and a  
22 nationwide class of similarly situated individuals, bring suit under the Telephone Consumer  
23 Protection Act, 47 U.S.C. § 227, *et seq.* (“TCPA”), which prohibits unsolicited voice and text  
24 calls to cell phones, California’s Unfair Competition Law (“UCL”), Cal. Bus. & Prof. Code §  
25 17200, § 17500, which prohibits unlawful, unfair and fraudulent conduct, as well as false  
26 advertising, and the common law for breach of contract.

27 5. On behalf of the classes and subclass defined herein, Plaintiffs seek an  
28 injunction requiring Defendant to cease all wireless spam activities and deceptive sales

1 practices, disgorgement of profits, and an award of statutory and/or actual damages to the  
2 class members, together with costs and reasonable attorneys' fees.

### 3 **PARTIES**

4 6. Plaintiffs Hubbard and Mills are family members and are domiciled in Contra  
5 Costa County, California. Plaintiff Hubbard is the authorized user of the cellular telephone  
6 number that received the offending text message alleged herein and Plaintiff Mills is the  
7 account holder of the family wireless plan through which both Plaintiffs receive cellular  
8 telephone service.

9 7. Defendant Wenner is a Delaware limited liability company with its principal  
10 place of business in New York. A publisher of several periodicals circulated nationwide,  
11 including *Us Weekly*, *Rolling Stone* and *Men's Journal*, Defendant does business throughout  
12 the United States both on its own and through several corporate subsidiaries such as Rolling  
13 Stone, LLC, Us Magazine, LLC, and Us Weekly, LLC, all of which in addition to Defendant  
14 are registered to do business in California and operate in this judicial district.

### 15 **JURISDICTION & VENUE**

16 8. The Court has subject matter jurisdiction over this action pursuant to 28  
17 U.S.C. § 1332 (d), because (a) at least one member of the putative class is a citizen of a state  
18 different from the Defendant, (b) the amount in controversy exceeds \$5,000,000, exclusive of  
19 interest and costs, and (c) none of the exceptions under that subsection apply to this action.

20 9. Venue is proper in this district pursuant to 28 U.S.C. § 1391(a)(1)-(2) because  
21 Defendant resides in this district, and because a substantial part of the events or omissions  
22 giving rise to this claim occurred in this district.

23 10. This Court has personal jurisdiction over the Defendant under Cal. Code Civ.  
24 Proc. § 410.10 because the Defendant is registered to do business in California and maintains  
25 offices in California, and because certain of the acts alleged herein were committed in  
26 California (and, specifically, the Northern District of California).

### 27 **INTRADISTRICT ASSIGNMENT**

28 11. The conduct giving rise to the claims in this matter originated in the County of

1 Contra Costa. Under Local Rule 3-2(c), this civil action should be assigned to either the San  
2 Francisco Division or the Oakland Division of the Northern District of California.

### 3 **COMMON ALLEGATIONS OF FACT**

4 12. In recent years, marketers who often have felt stymied by federal laws  
5 limiting solicitation by telephone, facsimile machine, and e-mail have increasingly looked to  
6 alternative technologies through which to send bulk solicitations cheaply.

7 13. One of the newest types of such bulk marketing is to advertise through Short  
8 Message Services. The term "Short Message Service" or "SMS" refers to a messaging  
9 system that allows cellular telephone subscribers to use their cellular telephones to send and  
10 receive short text messages, usually limited to 160 characters.

11 14. Defendant contracts with several different agents to generate subscription  
12 sales of its magazines through a variety of means. Many of the agents with whom Defendant  
13 contracts generate leads for the sale of subscriptions to Defendant's magazines through SMS  
14 message calls to consumers' cellular phones.

15 15. An "SMS message" is a text message call directed to a wireless device  
16 through the use of the telephone number assigned to the device. When an SMS message call  
17 is successfully made, the recipient's cellular phone rings, alerting him or her that a call is  
18 being received. As cellular telephones are inherently mobile and are frequently carried on  
19 their owners' person, calls to cellular telephones, including SMS messages, may be received  
20 by the called party virtually anywhere worldwide.

21 16. Unlike more conventional advertisements, wireless spam can actually cost its  
22 recipients money because cell phone users must frequently pay their respective wireless  
23 service providers either for each text message call they receive, or incur a usage allocation  
24 deduction to their text plan, regardless of whether or not the message is authorized.

25 17. As with other forms of advertising, marketers control the content that appears  
26 in the body of a text message in order to maximize the effectiveness of the advertisement. In  
27 certain cases, marketers employ misleading or deceptive content in the body of the message  
28 in order to increase the likelihood that the recipient will respond to the message.



1           18. Over the course of an extended period beginning in at least 2010, Defendant's  
2 agents directed the mass transmission of wireless spam to the cell phones nationwide of what  
3 Defendant hoped were potential customers of Defendant's products.

4           19. On or about November 30, 2010, Plaintiff Hubbard's cellular telephone rang,  
5 indicating that a text call was being received.

6           20. The "from" field of the transmission was identified as "650-283-0793,"  
7 which is a dedicated telephone number operated by Defendant's agents that transmits text  
8 messages *en masse* through devices known as modem banks and/or carrier gateways.

9           21. The body of the text message received by Plaintiff Hubbard identified the  
10 name of a ubiquitous discount retail store familiar to consumers nationwide and offered a gift  
11 card of a stated cash value to be used at such store ("Gift Card") in order to induce recipients  
12 to call the toll-free telephone number (877) 711-5429 that was contained in the message.

13           22. The aforementioned text message received by Plaintiff Hubbard indicated that  
14 Hubbard was eligible to receive a Gift Card by calling the toll-free telephone number  
15 contained in the message.

16           23. Intrigued by her eligibility to receive the Gift Card, Plaintiff Hubbard called  
17 the toll-free telephone number contained in the body of the message the following day to  
18 claim the Gift Card.

19           24. Unbeknownst to Plaintiff Hubbard at that time, the toll-free telephone number  
20 contained in the text message she received was operated by Defendant and its agents for the  
21 purpose of selling Defendant's magazines to recipients of such text messages.

22           25. Indeed, when Plaintiff Hubbard called the above toll-free telephone number,  
23 she was offered a subscription to Defendant's *Us Weekly* magazine in exchange for a  
24 payment with her credit card in the amount of \$9.95 and was further informed that in order  
25 for Hubbard to receive the Gift Card she would be required to provide her mailing address  
26 and pay a shipping fee ("Shipping Fee") of \$2.95 also with her credit card.

27           26. During the call to the toll-free number, Plaintiff Hubbard purchased from  
28 Defendant and its agents both the *Us Weekly* magazine subscription and the Gift Card by

1 paying with her credit card the respective amount for each item. Hubbard was further  
2 informed that she could expect to receive both items at her mailing address in no more than  
3 thirty days from the date she paid for the items.

4 27. Shortly thereafter, charges from Defendant and its agents appeared on  
5 Plaintiff Hubbard's credit card statement in the respective amounts of \$9.95, which was  
6 identified as originating from "WMA\*US Weekly (800) 283-3956 NY," and \$2.95, which  
7 was identified as originating from "GFT-Vouch (877) 775-0529 Smithtown NY."

8 28. While Plaintiff Hubbard did receive Defendant's *Us Weekly* magazine, at no  
9 time did Hubbard receive the Gift Card from Defendant or its agents, despite repeated  
10 attempts by Hubbard over the next several months to contact Defendant and/or its agents at  
11 the toll-free telephone number contained in the aforementioned text message, which Plaintiff  
12 subsequently learned had been disconnected.

13 29. At no time did Plaintiff Hubbard or Plaintiff Mills consent to the receipt of the  
14 above-referenced text message or any other such unsolicited text message advertising from or  
15 on behalf of Defendant.

#### 16 CLASS ACTION ALLEGATIONS

17 30. Plaintiffs bring this action, pursuant to Federal Rules of Civil Procedure  
18 23(b)(2) and 23(b)(3), on behalf of themselves and two classes (collectively the "Classes")  
19 and one subclass (the "Subclass") defined below:

20 A) The "TCPA Class" consisting of Plaintiffs and all others  
21 nationwide who received one or more unauthorized text message  
22 advertisements on behalf of Wenner containing the toll-free telephone  
23 number 877-711-5429;

24 B) The "Gift Card Class" consisting of Plaintiff Hubbard and all others  
25 nationwide who, on behalf of Wenner, received a text message  
26 advertisement offering a Gift Card, paid shipping fees for a Gift Card,  
27 and never received a Gift Card; and  
28

1 C) The "California Gift Card Subclass" consisting of Plaintiff Hubbard  
2 and all others in California who received a text message advertisement  
3 on behalf of Wenner, paid shipping fees for a Gift Card promoted  
4 therein, and never received a Gift Card.

5 31. In order to make its *en masse* transmission of text message advertisements  
6 economical, Defendant's agents used lists of thousands of cellular telephone numbers of  
7 consumers and maintained sophisticated call centers to receive inbound calls and process  
8 charges for magazine subscriptions and Shipping Fees. As such, the TCPA Class, the Gift  
9 Card Class, and the California Gift Card Subclass each consists of thousands of individuals  
10 and other entities, making joinder impractical.

11 32. Furthermore, in order to sell as many of Defendant's *Us Weekly* magazines as  
12 possible, Defendant and its agents deliberately concealed Defendant's identity as the  
13 beneficiary of the text message advertising at issue and instead promoted nonexistent Gift  
14 Cards in the bodies of such text message advertisements which Defendant and its agents  
15 knowingly did not intend to honor, even after consumers including Plaintiff Hubbard paid for  
16 Gift Card "shipping fees."

17 33. Plaintiffs will fairly and adequately represent and protect the interests of the  
18 other members of the Classes and the Subclass. Plaintiffs have retained counsel with  
19 substantial experience in prosecuting complex litigation and class actions. Plaintiffs and  
20 their counsel are committed to vigorously prosecuting this action on behalf of the members  
21 of the Classes and the Subclass, and have the financial resources to do so. Neither Plaintiffs  
22 nor their counsel have any interest adverse to those of the other members of the Classes or  
23 the Subclass.

24 34. Absent a class action, most members of the Classes and the Subclass would  
25 find the cost of litigating their claims to be prohibitive and would have no effective remedy.  
26 The class treatment of common questions of law and fact is also superior to multiple  
27 individual actions or piecemeal litigation in that it conserves the resources of the courts and  
28 the litigants and promotes consistency and efficiency of adjudication.

1           35. Defendant has, through its agents, acted and failed to act on grounds generally  
2 applicable to the Plaintiffs and the other members of the Classes in: (a) transmitting the  
3 wireless spam at issue; and (b) fraudulently charging Shipping Fees for nonexistent Gift  
4 Cards, requiring the Court's imposition of uniform relief to ensure compatible standards of  
5 conduct toward the members of the Classes and the Subclass.

6           36. The factual and legal bases of Defendant's liability to Plaintiffs and to the  
7 other members of the Classes and Subclass are the same, resulting in injury to the Plaintiffs  
8 and to all other members of the Classes and Subclass as a result of the transmission of the  
9 wireless spam alleged herein, and as a result of the charging of Shipping Fees for nonexistent  
10 Gift Cards. Plaintiffs and the other members of the Classes and Subclass have all suffered  
11 harm and damages as a result of Defendant's and its agents' unlawful and wrongful conduct  
12 in the transmission of the wireless spam and failure to honor the Gift Card offer.

13           37. There are many questions of law and fact common to the claims of Plaintiffs  
14 and the other members of the TCPA Class, and those questions predominate over any  
15 questions that may affect individual members of the TCPA Class. Common questions for the  
16 TCPA Class include but are not limited to the following:

- 17           (A) whether Defendant and/or its agents sent one or more text messages to  
18 the TCPA Class members;
- 19           (B) whether the text messages sent by or on behalf of Defendant violate  
20 the TCPA;
- 21           (C) whether Defendant and/or its agents used an automatic telephone  
22 dialing system to transmit the text messages at issue;
- 23           (D) whether Defendant's conduct violated the Class members' respective  
24 rights to privacy; and
- 25           (E) whether Defendant's conduct was willful such that the Class members  
26 are entitled to treble damages.

27           38. There are many questions of law and fact common to the claims of Plaintiff  
28 Hubbard and the other members of the Gift Card Class and the California Gift Card Subclass,



1 and those questions predominate over any questions that may affect individual members of  
 2 the Gift Card Class and the California Gift Card Subclass. Common questions for the Gift  
 3 Card Class and the California Gift Card Subclass include but are not limited to the following:

- 4 (A) whether the conduct of Defendant and its agents constitutes a breach  
 5 of contract to provide Gift Cards in the amounts identified in the text  
 6 messages to Plaintiff Hubbard and the other Gift Card Class members;
- 7 (B) whether Plaintiff Hubbard and the Gift Card Class members are  
 8 entitled to recovery of the stated cash value of the Gift Cards as  
 9 damages for Defendant's breach of contract;
- 10 (C) whether Plaintiff Hubbard and the Gift Card Class members are  
 11 entitled to reimbursement of the Shipping Fees that they paid to  
 12 Defendant and/or its agents.

13 Additionally, common questions for the California Gift Card Subclass include but are  
 14 not limited to the following:

- 15 (D) whether Defendant's and its agents' conduct is governed by the  
 16 California Unfair Competition Law, Cal. Bus. & Prof. Code § 17200  
 17 (the "UCL");
- 18 (E) whether the conduct of Defendant and its agents constitutes a violation  
 19 of the UCL;
- 20 (F) whether Defendant's and its agents' conduct is governed by the False  
 21 Advertising Law Cal. Bus. & Prof. Code §§ 17500 et seq. ("FAL");  
 22 and
- 23 (G) whether the conduct of Defendant and its agents constitutes a violation  
 24 of the FAL.

### 25 **FIRST CAUSE OF ACTION**

26 **(Violation of the TCPA, 47 U.S.C. § 227, et seq.: on behalf of the TCPA Class)**

27 39. Plaintiffs incorporate by reference the foregoing allegations as if fully set  
 28 forth herein.

1           40. Defendant, through its agents, made unsolicited commercial text calls,  
2 including the message described in paragraphs 17-21, to the wireless telephone numbers of  
3 the TCPA Class. Each such text message call was made using equipment that had the  
4 capacity to store or produce telephone numbers to be called, using a random or sequential  
5 number generator and to dial such numbers. By using such equipment, Defendant and its  
6 agents were able to effectively send text messages simultaneously to lists of thousands of  
7 consumers' wireless telephone numbers without human intervention.

8           41. These text calls were made *en masse* through the use of a dedicated telephone  
9 number and without the prior express consent of the Plaintiffs and the other members of the  
10 TCPA Class to receive such wireless spam.

11           42. Defendant has, therefore, violated 47 U.S.C. § 227(b)(1)(A)(iii). As a result  
12 of Defendant's conduct, the members of the TCPA Class suffered actual damages by having  
13 to pay their respective wireless carriers for the text messages where applicable and, under  
14 section 227(b)(3)(B), are each entitled to, *inter alia*, a minimum of \$500.00 in damages for  
15 each violation of said Act.

16           43. Because Defendant had knowledge that Plaintiffs and the TCPA Class  
17 members did not consent to the receipt of the aforementioned wireless spam, the Court  
18 should, pursuant to section 47 U.S.C. § 227(b)(3)(C), treble the amount of statutory damages  
19 recoverable by the Plaintiffs and the other members of the TCPA Class.

20  
21                           **SECOND CAUSE OF ACTION**  
22                           **(Breach of Contract on behalf of the Gift Card Class)**

23           44. Plaintiffs incorporate by reference the foregoing allegations as if fully set  
24 forth herein.

25           45. The text messages sent by or on behalf of Defendant state that Plaintiff  
26 Hubbard and the members of the Gift Card Class were eligible to receive a Gift Card by  
27 calling the toll-free telephone number contained in such text messages. When Plaintiff  
28 Hubbard and the members of the Gift Card Class called the toll-free telephone number,

1 however, they were offered subscriptions to Defendant's *Us Weekly* magazine, and were  
2 offered the Gift Card only in exchange for an agreement to pay Shipping Fees for such Gift  
3 Cards. By agreeing to pay for such subscriptions and Shipping Fees, Plaintiff Hubbard and  
4 the other members of the Gift Card Class accepted this offer and formed contracts with  
5 Defendant regarding the purchase and delivery of such magazines and gift cards.

6 46. Plaintiff Hubbard and the members of the Gift Card Class fully performed  
7 under such contracts by paying the subscription fees and Shipping Fees, as promised, by  
8 credit card.

9 47. Defendant and its agents materially breached such contracts by refusing to  
10 deliver the Gift Cards, despite full performance by Plaintiff Hubbard and the members of the  
11 Gift Card Class.

12 48. As a result of the breach, Plaintiff Hubbard and the members of the Gift Card  
13 Class have each suffered damages in the amount of the stated cash value of the Gift Cards.  
14 Plaintiff Hubbard and the members of the Gift Card Class have also suffered damages in the  
15 amount of the Shipping Fee.

### 16 **THIRD CAUSE OF ACTION**

17 **(Violation of California's Unfair Competition Law. Cal Business and Professional Code**  
18 **§ 17200, *et seq.* on behalf of the California Gift Card Subclass)**

19 49. Plaintiffs incorporate by reference the foregoing allegations as if fully set  
20 forth herein.

21 50. California's Unfair Competition Law ("UCL") (Cal. Bus. & Prof. Code  
22 §§ 17200, *et seq.*) protects both consumers and competitors by promoting fair competition in  
23 commercial markets for goods and services.

24 51. The UCL prohibits any unlawful, unfair or fraudulent business act or practice.  
25 A business practice need only meet one of the three criteria to be considered unfair  
26 competition. An unlawful business practice is anything that can properly be called a business  
27 practice and that at the same time is forbidden by law.

28 52. The transmission of these text messages by or on behalf of Defendant was

1 unlawful because it violated the TCPA as set forth above. In addition, the transmission of the  
2 text messages at issue violated the California False Advertising Law, California Business and  
3 Professions Code Section 17500, *et seq*, as fully set forth below, because the text message  
4 communications at issue falsely state that Plaintiff Hubbard and the other members of the  
5 California Gift Card Subclass have been chosen to receive Gift Cards to a discount retail  
6 store, and caused Plaintiff Hubbard and the other members of the California Gift Card  
7 Subclass to incur costs for Shipping Fees in connection with such Gift Cards.

8         53. Defendant's text message advertisements and calls to the toll-free number  
9 provided therein constitute communications, which falsely represented that Plaintiff Hubbard  
10 and the other members of the California Gift Card Subclass are eligible to receive a Gift Card  
11 to be used at a discount retail store nationwide. These communications were false, fraudulent  
12 and unfair.

13         54. Plaintiff Hubbard and the members of the California Gift Card Subclass  
14 reasonably expected to receive Gift Cards as Defendant represented in these communications  
15 and after paying Shipping Fees.

16         55. Defendant and/or its agents never intended to provide Gift Cards, have not  
17 provided Gift Cards to Plaintiff or members of the California Gift Card Subclass and, as  
18 such, these communications are likely to deceive consumers, like Plaintiffs, acting  
19 reasonably under the circumstances.

20         56. Defendant engaged in these marketing practices to increase its revenues and  
21 profits through the sale of its magazines, caused substantial injury to consumers and  
22 competition in the process, and provided no countervailing benefits to consumers or  
23 competition through its use of deceptive text message advertising and failure to provide Gift  
24 Cards as promised.

25         57. Plaintiff Hubbard and the members of the California Gift Card Subclass relied  
26 to their detriment on Defendant's unfair, fraudulent, and unlawful business practices. Given  
27 the deceptive nature of the unfair, fraudulent, and unlawful practices, Plaintiff and the  
28 California Gift Card Class could not have reasonably avoided injury. Had Plaintiff Hubbard



1 and the members of the California Gift Card Subclass been adequately informed and not  
 2 intentionally deceived by Defendant and its agents, they would have acted differently by,  
 3 without limitation:

- 4 a. not dialing 877-711-5429 to reach Defendant's agents;
- 5 b. not incurring the time and expense of responding to the offer of a Gift  
 6 Card;
- 7 c. not incurring the cost of paying the Shipping Fee; and
- 8 d. not providing their personal information, including their name and  
 9 street address, required to process the payment for the Gift Card, to  
 10 Defendant and its agents.

11 58. The acts alleged above are unlawful, unfair and fraudulent business acts or  
 12 practices and constitute unfair competition under the UCL.

13 59. These UCL violations have damaged Plaintiff Hubbard and the members of  
 14 the California Gift Card Subclass by causing them to pay the Shipping Fee, and to provide  
 15 their personal information to Defendant and its agents under the false pretense that Defendant  
 16 would provide a Gift Card.

17 60. Plaintiff Hubbard, on her own behalf and on behalf of the members of the  
 18 California Gift Card Subclass, seeks an order enjoining Defendant's unfair competition  
 19 alleged herein, and restitution of property gained by such unfair competition under the UCL  
 20 (Cal. Bus. & Prof. Code § 17203), as well as interest, attorneys' fees and costs pursuant to, in  
 21 part, Cal. Code Civ. Proc. § 1021.5.

22 **FOURTH CAUSE OF ACTION**  
 23 **(Violation of False Advertising Law Cal. Bus. & Prof. Code §§ 17500 *et seq.* on behalf of**  
 24 **the California Gift Card Subclass)**

25 61. Plaintiffs incorporate by reference the foregoing allegations as if fully set  
 26 forth herein.

27 62. Defendant, through its agents, engaged in advertising and marketing to the  
 28 public, and transmitted text messages *en masse* on a nationwide basis, including in

1 California. Through the text messages, Defendant publically represented and advertised that,  
2 by calling a toll-free number provided in the body of these messages and thereafter paying a  
3 Shipping Fee, a Gift Card would be provided. Defendant and its agents made such a false  
4 representation with the intent to induce Plaintiff Hubbard and California Gift Card Subclass  
5 members to pay a Shipping Fee for a Gift Card and to purchase Defendant's magazine  
6 products.

7 63. Defendant's advertising and marketing statements contained in the text  
8 message and in calls to the toll-free numbers were and are untrue or misleading and likely to  
9 deceive the public because: (a) Defendant and/or its agents knew or should have known that  
10 the Gift Cards would not be delivered; (b) the messages suggested an association or  
11 affiliation with a ubiquitous discount retail store that did not exist; and (c) the messages  
12 omitted any reference to the true product being advertised – *i.e.*, Defendant's magazines.

13 64. In making and disseminating the statements alleged herein, Defendant knew  
14 or should have known that its statements, and those of its agents, were false and misleading  
15 and therefore in violation of §§ 17500, *et seq.*

16 65. Plaintiffs and the California Gift Card Subclass members relied on these  
17 statements in calling the toll-free number and/or in paying Shipping Fees.

18 66. As a direct and proximate result of Defendant's false advertising, Plaintiffs  
19 and the California Gift Card Subclass have suffered injury in fact and lost monies to  
20 Defendant.

21 67. Plaintiffs seek an order enjoining Defendant from continuing to engage in the  
22 false advertising described herein. Plaintiffs seek an order (1) requiring Defendant to cease  
23 the false advertising practices described herein; (2) requiring Defendant to restore to the  
24 California Gift Card Subclass members any monies acquired by means of false advertising  
25 (restitution); and, (3) awarding reasonable costs and attorneys' fees pursuant to Cal. Code  
26 Civ. Proc. § 1021.5.

27 WHEREFORE, Plaintiffs Jasmine Hubbard and Marvel Mills, on behalf of  
28 themselves and the Classes and Subclass, prays for the following relief:

- a) An order certifying the Classes and Subclass as defined above and designating Plaintiffs and their Counsel as representatives of the Classes and Subclass;
- b) An award of actual and/or statutory damages;
- c) An injunction requiring Defendant to cease all wireless spam activities;
- d) An injunction requiring Defendant to cease all deceptive marketing practices;
- e) Restitution of all property or monies gained or acquired by the unfair competition and/or false advertising alleged herein;
- f) An award of punitive damages;
- g) An award of reasonable attorneys' fees and costs; and
- h) Such further and other relief the Court deems reasonable and just.

**JURY DEMAND**

Plaintiffs request trial by jury of all claims that can be so tried.

Respectfully submitted,

Dated: September 20, 2011

**JASMINE HUBBARD AND MARVEL MILLS,**  
**individually and on behalf of a class of**  
**similarly situated individuals**

By: Sean P. Reis  
One of Plaintiffs' attorneys

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